Supreme Court, U.S.
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No. 99-1381

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1999

YUKI KOBAYASHI,

Petitioner,

vs.

VAINO SPENCER, REUBEN A. ORTEGA, MIRIAM A. VOGEL, JOAN D. KLEIN, PATTI S. KITCHING, H. WALTER CROSKEY, RICHARD DENNIS ALDRICH, CHARLES VOGEL, NORMAN L. EPSTEIN, ALEXANDER H. WILLIAMS, III, PETER D. LICHTMAN, STEPHEN A LACHS, ROBERT H. O'BRIEN, ROBERT W. PARKIN, VICTOR E. CHAVEZ, and COUNTY OF LOS ANGELES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

DOES THE FEDERAL DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION OVER FINAL DETERMINATIONS OF A STATE COURT IN JUDICIAL PROCEEDINGS?

PARTIES TO THE PROCEEDINGS

Petitioner YUKI KOBAYASHI is an individual proceeding in Pro Se.

Respondents ALEXANDER WILLIAMS, III, PETER H. LICHTMAN, STEVEN D. LACHS, ROBERT O'BRIEN, ROBERT PARKIN and VICTOR E. CHAVEZ are County of Los Angeles Superior Court judicial officers who were sued by petitioner in their individual capacity. Claims against each arise out of conduct occurring in the exercise of their official judicial capacity.

Respondent COUNTY OF LOS ANGELES, is a municipal entity and was sued as such. 42 U.S.C. Section 1983 claims against this respondent are based on a theory of respondeat superior relating to the complained of specific acts by the above-named judges.

Respondents VAINO SPENCER, REUBEN A. ORTEGA, MIRIAM A. VOGEL, JOAN D. KLEIN, PATTI S. KITCHING, H. WALTER CROSKEY, RICHARD DENNIS ALDRICH, CHARLES VOGEL, and NORMAN L. EPSTEIN are California Court of Appeal justices. Claims against each arise out of conduct occurring in the exercise of their official judicial capacity.

Respondent STATE OF CALIFORNIA, is a sovereign state and was sued as such. 42 U.S.C. Section 1983 claims against this respondent are based on a theory of respondeat superior relating to the complained of specific acts by the above-named appellate court justices.

The issues raised on appeal to the 9th Circuit did not address the sufficiency of service of process on County of Los Angeles Municipal[1] Court Judge Susan Isacoff who did not make a general appearance at the proceedings in the district court. Accordingly, the Petition does not raise any issue with respect to Judge Isacoff individually and she is therefore omitted from the list of respondents.

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[1] Since the filing of this Petition Superior and Municipal courts for the County of Los Angeles, State of California have been consolidated. The Municipal Court no longer is a recognized jurisdictional entity.

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STATEMENT OF JURISDICTION

This Honorable Court's jurisdiction on a writ of certiorari is enumerated in Rule 10 of the Rules of the Supreme Court of the United States. It is clearly stated "A petition for a writ of certiorari will only be granted for compelling reasons." Respondent asserts herein that the issues raised in the petition are not issues of great legal importance and there is no compelling reason to grant the within Petition and it should be denied.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

On June 17, 1998, Petitioner filed a Complaint seeking injunctive relief against several California State Superior Court Judges and one Municipal Court Judge as well as several California State Court of Appeal Justices.

The Complaint seeks relief for an alleged erroneous proceedings which took place in three state suits, one arising out a class action in which Petitioner was an unnamed plaintiff class member. It is Petitioner's claim that he suffered discrimination by the state judges based on his socioeconomic status, race and pro per status all in violation of his 5th and 14th Amendment Rights. The relief requested by Petitioner seeks to have the federal District Court enjoin and restrain state judges from violating codes of California State Cannon of Judicial Ethics and to enjoin said state judges from hearing any pending or future cases in which Petitioner is a party.

On July 9, 1998 Respondents, COUNTY OF LOS ANGELES, ALEXANDER WILLIAMS, III, PETER H. LICHTMAN, STEVEN D. LACHS, ROBERT O'BRIEN, ROBERT PARKIN and VICTOR E. CHAVEZ filed a Motion to Dismiss the Complaint for lack of subject matter jurisdiction, judicial immunity or in the alternative for a more definite statement.

On August 4, 1998 Petitioner filed a Motion to Disqualify Magistrate Judge Ralph Zarefsky.

On August 12, 1998 Judge Lourdes G. Baird denied Petitioner's Motion to Disqualify Magistrate Judge Ralph Zarefsky.

On October 27, 1998 Judge Lourdes G. Baird accepted the Report and Recommendation issued by Judge Ralph Zarefsky and dismissed the action without prejudice for lack of subject matter jurisdiction.

On November 30, 1998, Petitioner filed a timely Notice of Appeal.

On November 18, 1999, the 9th Circuit Court of Appeals affirmed the District Court's dismissal.

On February 15, 2000, petitioner filed the instant petition for writ of certiorari.

STATEMENT OF FACTS

Causes of action as to Respondents Judge Lachs and Judge Lichtman concern Los Angeles Superior Court Case No. BC073320 (Matsumoto, et.al. v. Gotcher, et.al.).

Petitioner avers that Judge Lachs refused to act on an Affidavit of Prejudice (it is unclear from the underlying Complaint in what format the plaintiffs' sought to disqualify Judge Lachs in the state action) filed against him in a timely manner.

Petitioner claims Judge Lichtman refused to strike a Memorandum of Costs on Appeal; entered an award of costs against a non-appearing plaintiff; and refused to act on an Affidavit of Prejudice pursuant to California Code of Civil Procedure § 170.3(c)(1) (hereinafter referred to as CCP) filed against him in a timely manner.

Causes of action as to Respondents' Judge O'Brien, Judge Parkin, Judge Chavez and Judge Williams concern Los Angeles Superior Court Case Nos. BC170895 (Kobayashi v. Aleman); B118104 and B118640.

Petitioner claims Judge O'Brien "unlawfully denied plaintiff's Ex Parte Application for TRO relief."

Petitioner claims Judge Parkin "unlawfully struck plaintiff's Statement of Disqualification against Judge Horowitz ."

Petitioner claims Judge Chavez "unlawfully denied plaintiff's Motion to Strike Judge Parkin's Order."

Petitioner claims Judge Williams "passed upon his own disqualification . . . in violation of CCP § 170.3(c)(5).

ARGUMENT FOR DENYING WRIT

I

THERE IS NO JURISDICTIONAL BASIS FOR THE SUPREME COURT TO GRANT DE NOVO REVIEW OF THE LEGAL DETERMINATIONS MADE BY THE DISTRICT COURT AND UPHELD BY THE 9TH CIRCUIT COURT OF APPEALS.

Petitioner seeks de novo review of the District Court's dismissal of his1983 action for lack of subject matter jurisdiction in which he alleged a denial of his constitutional rights arising out of judicial inaction/conduct attendant to three different state trial court proceedings, namely (1) refusing to accept/file affidavits disqualifying state judges; (2) denial of petitioner's application for the issuance of temporary restraining orders; and (3) the dismissal of a class action suit, in which petitioner was an unnamed class member.

Whether subject matter jurisdiction exists is a question of law. Federal district courts have no authority to review the final determinations of a state court judicial proceeding. *District of Columbia Court of Appeals v. Feldman*, (1983) 460 U.S. 462,482, 103 S.Ct 1303.

A. THERE IS NO CONFLICT BETWEEN STATE AND FEDERAL LAW.

There is no conflict between state and federal law presented in this petition.

B. THERE IS NO ISSUE OF CONFLICTING CIRCUIT OPINIONS.

There are no conflicting circuit opinions on the issue of lack of subject matter jurisdiction over a collateral attack against prior state court proceedings.

The case cited by petitioner *Lynk v. Laporte Superior Court*, 789 F.2d 554 (7th Cir. 1986) is case specific as Lynk had "no procedures open to him under state law..."after the state court refused to entertain his divorce proceedings without a personal appearance and also refused to remove him from state prison for the purpose of appearing at his divorce proceedings. *Id* at 560. This Court aptly noted a fundamental denial of due process and Lynk was able to demonstrate that he lacked an adequate remedy at law, thus the extraordinary remedy of injunctive relief by a federal court over state judicial proceedings was warranted.

The instant petition does not raise the deprivation of a federal right or due process violation, although labeled as such. Petitioner plainly seeks to prospectively enjoin state judicial officers based on previous adverse rulings. "An adverse judgment, even one that is you erroneous as a matter of State for even federal law, is not a denial of due process."*Lynk v. Laporte Superior Court*, *supra* at 563-564.

C. THE COURT OF APPEAL DECISION DOES NOT CONFLICT WITH DECISIONS BY THIS COURT.

The district court's ruling is not in conflict with decisions of this Court. The district court ruling was limited to a finding that based on the alleged deprivation of rights. Those enumerated by Petitioner were in fact final determinations of a state court in judicial proceedings. The district court found that the substance of petitioners 1983 action amounted to nothing more than an impermissible collateral attack on prior state court decisions, and based on that legal determination, found that the court had no subject matter jurisdiction.

II.

THE DISTRICT COURT AS UPHELD BY THE COURT OF APPEALS CORRECTLY DISMISSED PETITIONER'S 1983 ACTION FOR LACK OF SUBJECT MATTER JURISDICTION

A. THE FEDERAL DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION.

Under Rule 12(b)(1)and 12(b)(6) of the *Federal Rules of Civil Procedure*, the court may dismiss an action for lack of subject matter jurisdiction. Federal subject matter jurisdiction must exist at the time the action is commenced. *Morongo Band of Mission Indians v. California State Board of Equalization, 858 F.2d 1376 (9th Cir.1988).*

As courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462,482, 103 S.Ct 1303 (1983) *Worldwide Church of God v. McNair*, 805 F.2d 888,890 (9th Cir.1986) This is true even when the challenge to a state court decision involves federal constitutional issues. *Branson v. Nott*, 62 F.3d 287 (9th Cir.1994) citing *Feldman, Id,* at 484-86 and *Worldwide Church of God, Id*, at 891.

Whether subject matter jurisdiction exists is a question of law. *Nike, Inc. v. Comercial Iberica De Exclusivas Deportivas, S.A.*, 20 F.3d 987, 990 (9th Cir.1994)

B. ABSTENTION DOCTRINE REQUIRED DISMISSAL.

Under the holdings in *Younger v. Harris*, 40 U.S. 37 (1971) and *Railroad Commission v. Pullman*, 312 U.S. 496 (1941) the abstention doctrine applies to bar the underlying action brought by Petitioner.

Abstention is appropriate in this matter because the underlying action involves state interests, and the state forum provides an adequate opportunity to raise federal issues. *Middlesex County Ethics Commission v. Garden State Bar Association*, 457 U.S. 432 (1982). *Kenneally v. Lungren*, 967 F.2d 329, 331 (9th Cir. 1992), *cert.denied*, 113 S.Ct 979 (1993) *World Famous Drinking Emporium, Inc.*, 820 F.2d 1079.

C. COMMITY REQUIRED DISMISSAL.

Federal Courts are prohibited from reviewing state court decisions. The exclusive jurisdiction for such review is the United State Supreme Court. *Rooker v. Fidelity Trust Co.* 263 U.S. 413, 416 (1923); *District of Columbia Court of Appeals v. Feldman* , 460 US. 462,476 (1983).

This rule applies even if the underlying issues concern constitutional issues. *Feldman, supra* and *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir.) *cert. denied*, 116 S.Ct 565 (1995).

The inquiry is whether the underlying federal claim involves constitutional claims which are "inextricably intertwined with the state court's decision in a judicial proceeding." *Feldman, supra* at 483 fn 16; *Dubinka v. Judges of Superior Court*, 23 F.3d 218,221 (9th Cir. 1994).

While federal district court's do have subject matter jurisdiction over the constitutionality of a state rule or statute, it lacks jurisdiction to consider the application of the rule or statute by the state judiciary.

It is not the underlying rules or procedures of the state proceedings that petitioner challenges, it is rather the judges abuse of said rules and statutes as a result of judicial bias toward pro se litigants.

For the District Court to entertain petitioner's argument, it would necessarily have to review the substantive state court rulings complained of by petitioner.

D. ANTI-INJUNCTION ACT 28 U.S.C. §2283 REQUIRED DISMISSAL.

The *Anti-Injunction Act*, 28 U.S.C. §2283, provides:

> A court of the Unites States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

In *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511, 515 (1955), the Supreme Court held that the Anti-Injunction Act "... is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

In *Atlantic C.L.R. Co. v. Brotherhood of Engineers*, 398 U.S. 281, 90 S.Ct. 1739 (1970), the Supreme Court referring to the *Richman Bros.* holding stated,

> Congress has not seen fit to amend the statute and we therefore adhere to that position and hold that any injunction against state court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory

> exceptions to §2283 if it is to be upheld. Moreover, since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court. *Id* at 287.

In *Empire Blue Cross v. Janet Greeson's A Place For Us*, 985 F.2d 459 (9th Cir. 1993) the court reversed the district court's order issuing a preliminary injunction enjoining hospitals from pursuing insurers in an arbitration matter. The court held the injunction to be neither expressly authorized by an Act of Congress, nor in aid of the jurisdiction of the district court, nor necessary to effectuate a judgment of the district court, and the injunction thereby was found to be violative of the Anti-Injunction Act.

Similarly, the relief sought by petitioner at the district court level requested injunctive relief for which there is no specified exception articulated and specified by an Act of Congress or found within the Anti-Injunction Act. The relief requested by petitioner is simply unavailable from the federal district court.

While this Court has recognized 1983 actions to be an exception to the anti-injunction statute, it has also "reaffirmed the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." *Mitchum v. Foster*, 407 U.S. 225 (1972)

In *Pulliam, etc. v. Allen*, et al.,466 U.S. 522;104 S.Ct. 1970 (1984) relied on by petitioner for the proposition that the district court erroneously found that petitioner was not entitled to equitable relief, misstates the courts findings. Neither the 9th Circuit Court of Appeals nor the District Court reached the merits of whether petitioner was entitled to equitable relief pursuant to 42 U.S.C. Section1983 as

neither court addressed or determined whether petitioner had an adequate remedy at law . The district court never reached the analysis of whether equitable relief was appropriate because it found, and correctly so, that the court lacked subject matter jurisdiction.

CONCLUSION

For the above stated reasons, the Petition for writ of certiorari should be denied for want of a substantial federal question.

Respectfully submitted:

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